IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29 .01.2007

CORAM

THE HONOURABLE MR.JUSTICE M.JAICHANDREN

WRIT PETITION No.27573 of 2004

1.M.L.Mathews
2.Ms.Geetha Mathews
3.M.I.Jacob
son of late M.I.Malloth
All rep by Power of Attorney
P.Dhanapal,
No.29, III Street,
Nehruji Nagar,
Arakkonam Town,
Vellore District ... Petitioners

Vs.

1.The Inspector General of Registration
No.100, Santhom Salai,
Mylapore, Chennai - 28.
2.The Joint Sub Registrar No-2,
Arakonam
3.The Revenue Divisional Officer,
Ranipettai,
Vellore.
4.V. Kumar ... Respondents

Impleaded as per order of this Court
dated 14.3.2005 in WPMP.46516/04

* * *

The Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus as stated therein.

* * *

For petitioner : Mr.ARL.Sundaresan,
Senior Advocate for
M/s. A. L. Ganthimathi &
Mr. C.T. Murugappan

For respondents : Mr.C.Thirumaran
Government Advocate
For R1 to R3
Mr.V.Raghavachari -
For R4

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O R D E R

The Writ Petition has been filed praying for the issuance of a Writ of Certiorarified Mandamus to call for the records relating to the order, dated 05.08.2004, Na.Ka.A4.4068/2002 of the third respondent and the memorandum No.433/2004, dated 08.09.2004, of the second respondent and quash the same and consequently direct the second respondent to register the sale deeds in respect of the plots in S.No.161/1, Keelkuppam Village, Arakonam Taluk.

2.Heard the learned counsel for the petitioners as well as for the respondents.

3.It is submitted on behalf of the petitioners that the lands of an extent of 7.09 acres situated at S.No.161/1 in Keelkuppam Village, Arakkonam Taluk, was assigned in favour of one Rosikhan, son of Sivaramulu, in the year 1923, under DKT 492/23, dated 28.12.1923. The said lands were assigned to him as he was a landless poor person under Dharkast rules with certain terms and conditions including that he should not sell or mortgage the said lands for a period of 10 years from the date of assignment. Following the assignment, the lands were being cultivated by Rosikhan, who was in possession and enjoyment of the same. In the year 1951, he had sold the lands to one Thaikhan under a registered Sale Deed, dated 15.02.1951, under Document No.517. Subsequently, Thaikhan had sold the lands to Benjamin son of Maran and M.I.Jacob son of Mallath, by a registered Sale Deed, dated 07.06.1956, under Document No.2170. The said Benjamin had released his rights over the lands in favour of Mathew under a release deed, dated 06.05.1988, and from the date of the release deed, the said Mathew has been in possession and enjoyment of the lands along with his brother Jacob. It has been further submitted that a joint patta had been granted in favour of Mathew and Jacob under patta No.350. The names were also entered in all the revenue records, including the Chitta and Adangal. Subsequently, a family arrangement had taken place by which Jacob had settled half of his share in the property to his brother's daughter Geetha Mathews, by a settlement deed , dated 29.03.1989. Thus, the first petitioner became entitled to half share and the second and third petitioners were entitled to one fourth share each in the property in S.No.161/3, to an extent of 7.09 acres.

4. The petitioners, who are the owners of the above mentioned lands, had executed a power of attorney in favour of one P.Dhanapal, son of poongavanam, who has filed the affidavit in support of the present writ petition on behalf of the petitioners. The said P.Dhanapal, with an intention to develop the lands, had formed a lay out and submitted the plan for approval to the Block Development

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Officer, Arakonam, on 02.05.2002. The Block Development Officer, Arakonam, by a letter, dated 07.05.2002, had directed P.Dhanapal to approach the President of the concerned Panchayat and he was also directed to execute a gift deed in favour of the Panchayat for the areas earmarked as road , park and public places etc., Accordingly, P.Dhanapal had executed the gift deed in favour of the Panchayat, on 09.05.2002. Thereafter, the layout was approved and a 'No Objection Certificate' was also granted, for the sale of the plots by the President of the Panchayat, on 03.07.2002. Thereafter, six plots were sold to several persons, from 13.03.2002 to 13.12.2002. While so, the third respondent had issued a notice, dated 20.10.2003, alleging that the lands S.No.161/1 were assigned to a Schedule Caste person by name Rosikhan and the sale in favour of persons belonging to the other communities was against the conditions under which the original assignment had been made. Hence, the second petitioner was called upon to show cause as to why her sale deed should not be canceled. The second petitioner was given 15 days time to show cause stating that if she failed to do so, a final order would be passed. On receipt of the said notice, a detailed reply was sent narrating all the facts and pointing out that the sale was made only after a period of 27 years and therefore, there was no violation of the conditions of the assignment, as alleged in the notice. It was also stated that the lay out was approved and transactions were also made in respect of the said lands and there was no dispute in that regard. Further, on a perusal of the records, it was clear that there was no conditional assignment of the lands in S.No.161/1 said to have been made in favour of Rosikhan. Even though there were no further communications from the third respondent, the second respondent had issued instructions to the Sub-Registrar, Arakonam, not to register the sale deeds in respect of the said lands. Therefore, the Sub-Registrar, Arakonam, had refused to register the Sale Deed and he had insisted that those who were purchasing house plots in S.No.161/1 should produce Adi-Dravidar Community Certificates with the intention of avoiding persons belonging to other communities from purchasing the house sites. Accordingly, the Tahsildar, Arakonam, had issued a letter, dated 04.03.2003, to the second respondent marking a copy to the third respondent, directing them not to register any sale deed to any person not belonging to Adi-dravidar community and had called for further clarifications in that regard.

5.A writ petition filed before this Court, in W.P.No.27702 of 2003, was dismissed by an order, dated 07.10.2003, wherein it was stated that an interdepartmental communication cannot be challenged. Thereafter, a detailed representation was sent to the first respondent requesting him to issue necessary instructions to the third respondent not to insist on the production of community certificates by the intending purchasers. It was also requested that

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the third respondent should be directed to register the sale deeds relating to the said lands. Thereafter, 15 sale deeds were registered by the second respondent . While so, on 20.03.2004, the third respondent had issued a notice referring to the earlier notice, dated 20.10.2003, and without referring to the reply issued to the said notice, stating that the enjoyment of the lands in S.No.161/1 assigned in favour of Rosikhan is in violation of the conditions of assignment. By the said notice, an enquiry was proposed to be held. By a letter, dated 05.08.2004, the third respondent had stated that the lands were assigned in favour of the Rosikhan belonging to Adi-dravidar Community with certain conditions. As per the said conditions, it should not be sold to persons belonging to other communities. Further, as per Government Orders, agricultural lands should not be converted into lay outs. Due to the violations of the conditions, steps were being taken to cancel the assignment. Further, due to the impugned order, dated 05.08.2004, passed by the third respondent in Na.Ka.A4 4068 of 2002 and the Memorandum No.433 /2004, dated 08.09.2004, issued by the second respondent, the petitioners were not able to register any sale deeds through their power of attorney P.Dhanapal.

6.The learned counsel appearing on behalf of the petitioners has placed reliance on an order of this court in R.Ramanathan and others Vs. The State of Tamil Nadu and another reported in 1997 MLJ 406, wherein it was held that the petitioners therein had purchased the lands in the year 1973, and the pattas were also issued with regard to the said lands and the lands were developed by investing substantial money. Therefore, the proceedings by the Government initiated in the year 1987, for resumption of the lands, were held to be barred by estoppel.

7.The learned counsel appearing for the petitioners had relied on the decision of the Supreme Court in State of Rajasthan and others Vs. Basant Nahata, reported in AIR 2005 Supreme Court 3401, where in it has been held as follows :-

> "Public policy is not capable of being given a precise definition. What is 'opposed to public policy' would be a matter depending upon the nature of the transaction. The pleadings of the parties and the materials brought on record would be relevant so as to enable the Court to judge the concept as to what is for public good or in the public interest or what would be injurious or harmful to the public good or the public interest at the relevant point of time as contra-distinguished from the policy of a particular Govt. A law dealing with the rights of a citizen is required to be clear and unambiguous. Doctrine of public policy is contained in a branch of common law, it is governed by precedents. The principles have been

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crystallized under different heads and though it may be possible for the Courts to expound and apply them to different situations but it is trite that the said doctrine should not be taken recourse to in 'clear and incontestable cases of harm to the public though the heads are not closed and though theoretically it may be permissible to evolve a new head under exceptional circumstances of a changing world.'

A contract being 'opposed to public policy' is a defence under S.23 of the Indian Contract Act and the Courts while deciding the validity of a contract has to consider: a) Pleadings in terms of O.6 Rule 1 of the Code of Civil Procedure. b) Statute governing the case c) Provisions of Parts III and IV of the Constitution of India. d) Expert evidence, if any e) The materials brought on record of the case f) Other relevant factors, if any. It becomes amply clear that it is not possible to define public policy with precision at any point of time. It is not for the executive to fill these grey areas as the said power rests with judiciary. Whenever interpretation of the concept 'public policy' is required to be considered it is for the judiciary to do so and in doing so even the power of the judiciary is very limited. Even for the said purpose, the part dealing with public policy in S.23 of the Contract Act is required to be construed in conjunction with other parts thereof.

However,after discussing all the relevant aspects of the case the Supreme Court had finally stated.

"so far as amendments made by other States are concerned, we are of the opinion that any order passed by a Sub-registrar or Registrar refusing to register a document pursuant to any notification issued under Section 22-A of the Act would not be re-opened."

It has been pointed out by the learned counsel appearing on behalf of the petitioners that Section 34 and 35 of The Registration Act,1908 and Rule 55 of The Registration Rules are relevant for the present case. They read as follows:-

Section 34.Enquiry before registration by registering officer - (1) Subject to the provisions contained in this Part and in Sections 41,43,45,69,75,77,88 and 89, no document shall be registered under this Act, unless the persons executing such document, [and in the case of document for sale of property, the persons claiming under that document] or their representatives, assigns or agents authorised as aforesaid, appear before the registering officer within the time, allowed for presentation under Sections 23,24,25 and 26:

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Provided that, if owing to urgent necessity or unavoidable accident all such persons do not so appear, the Registrar, in cases where the delay in appearing does not exceed four months, may direct that no payment of a fine not exceeding ten times the amount of the proper registration fee, in addition to the fine, if any, payable under Section 25, the document may be registered.

(2) Appearances under sub-section (1) may be simultaneous or at different times.

(3) The registering officer shall thereupon-

(a) enquire whether or not such document was executed by the persons by whom it purports to have been executed;

(b) satisfy himself as to the identity of the persons appearing before him and alleging that they have executed the document [or they are claiming under the document]; and

(c) in the case of any person appearing as a representative, assign or agent, satisfy himself of the right of such person so to appear.

(4) Any application for a direction under the proviso to sub-section (1) may be lodged with a Sub-Registrar, who shall forthwith forward it to the Registrar to whom he is subordinate.

(5) Nothing in this section applies to copies of decrees or orders.

Section 35.Procedure on admission and denial of execution respectively .- (1) (a) If all the persons executing the document appear personally before the registering officer and are personally known to him, or if he be otherwise satisfied that they are the person they represent themselves to be, and if they all admit the excution of the document, or

(b) if in the case of any person appearing by, a representative, assign or agent, such representative, assign or agent admits the execution, or

(c) if the person executing the document is dead, and his representative or assign appears before the registering officers and admits the execution, the registering officer shall register the document as directed in sections 58 to 61, inclusive.

(2) The registering officer may, in order to satisfy himself that the persons appearing before him are the persons they represent themselves to be, or for any other purpose contemplated by this Act, examine any one present in his office.

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(3) (a) If any person by whom the document purports to be executed denies its execution, or

(b) If any such person appears to the registering officer to be a minor, an idiot or a lunatic, or

(c) If any person by whom the document purports to be executed is dead, and his representative or assign denies its execution,

the registering officer shall refuse to register the document as to the persons so denying, appearing or dead; Provided that, where such officer is a Registrar, he shall follow the procedure prescribed in Part XII.

[Provided further that the State Government may by notification in the Official Gazette, declare that any Sub-Registrar named in the notification shall, in respect of documents the execution of which is denied, be deemed to be a Registrar for the purpose of this sub-section and of Part XII.]

Rule 55. It forms no part of a registering officer's duty to enquire into the validity of a document brought to him for registration or to attend to any written or verbal protest against the registration of a document based on the ground that the executing party had no right to execute the document; but he is bound to consider objections raised on any of the grounds stated below :-

"(a) that the parties appearing or about to appear before him are not the persons they profess to be;

(b) that the document is forged;

(c) that the person appearing as a representative, assign or agent, has no right to appear in that capacity;

(d) that the executing party is not really dead, as alleged by the party applying for registration; or

(e) that the executing party is a minor or an idiot or a lunatic."

"Section 22-A.Documents registration of which is opposed to public policy - (1) The State Government may, by notification in the Tamil Nadu Government Gazette, declare that the registration of any document or class of documents is opposed to public policy.

(2) Notwithstanding anything contained in this Act, the registering officer shall refuse to register any document to which a notification issued under sub-section (1) is applicable.]

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8.It is seen that the impugned orders have been passed without adverting to the powers vested in the Registering Authorities under the Registration Act, 1908. The learned government advocate appearing on behalf of the respondents is not in a position to show that the powers have been exercised by the Registering Authorities only in accordance with the Registration Act, 1908, and the Registration rules framed thereunder, Futher it has also not been shown as to how or for what reasons the Registering Authority has refused to register the documents submitted on behalf of the petitioners. It is for the respondents to show that such registration would be contrary to public policy and would be in violation of the provisions of law applicable to the case. In the absence of such violation, the respondents cannot refuse to register the documents submitted on behalf of the petitioners. Therefore, the writ petition is allowed, setting aside the impugned order, dated 05.08.2004, passed by the third respondent in Na.Ka.A4 4068/2002 and the memorandum No. 433/2004, dated 08.09.2004, issued by the second respondent. Consequently, the second respondent is directed to register the sale deeds submitted on behalf of the petitioners in respect of S.No.161/1, Keelkuppam Village, Arakonam Taluk,Vellore District. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Inspector General of Registration
No.100, Santhom Salai,
Mylapore, Chennai - 28.

2. The Joint Sub Registrar No-2, Arakonam

3. The Revenue Divisional Officer,
Ranipettai, Vellore.

+ 1 cc to Mr. V. Raghavachari, Advocate, SR No.5412

MG(CO)
SR/1.2.2007

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